

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 691 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

STATE OF GUJARAT

Versus

DALVADI DEVJI LAVJI

Appearance:

Mr.S.A.Pandya, Addl.P.P. for the appellant.

Mr. Y.S.Lakhani, Advocate for the respondent.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 24/10/96

ORAL JUDGEMENT

This appeal has been filed by the State of Gujarat challenging the judgment and order of acquittal passed by the learned Judicial Magistrate, First Class, Limdi in Criminal Case No.744/86 acquitting the respondent-accused for the offence punishable under section 326 of the Indian Penal Code.

It is the prosecution case that on 5-7-86 at about 7.00 p.m. when Prabhu the son of the complainant Magan Amarshi was going to his field, the accused met him. The accused, while asking Prabhu as to why he (the accused) is being disreputed by branding him as a thief, inflicted as many as three spade blows on the left cheek, left leg and on the left back portion. The incident was witnessed by Vaja Nagji and Mahobatsing. On their raising shouts, the accused ran away. Vaja Nagji thereafter informed the complainant Magan Amarshi who took his son Prabhu in bleeding condition to Chuda Police Station and thereafter, at the instance of the police, he was taken to Limdi Hospital where he gave complaint. The Investigation Officer, Chuda Police Station, after completing the investigation, submitted the chargesheet. Charge Ex.11 was framed against the accused to which he pleaded not guilty. The learned Magistrate, after appreciating the evidence of the prosecution witnesses, found that the prosecution has failed to prove the charge against the accused. He, therefore, passed the order of acquittal against the accused.

Mr. S.A.Pandya, learned Additional Public Prosecutor, was confronted with as many as five reasons recorded by the learned Magistrate in para 10 of his judgment. Needless to say that Mr.Pandya is unable to dislodge any one of them and has left the matter to the discretion of the Court. The learned Magistrate has recorded that two eye witnesses Vaja Nagji and Popat Jasmat, who were present when the incident happened, have not been examined by the prosecution. It is to be noted that witness Vaja Nagji was the person who informed the complainant about the involvement of the accused and surprisingly, for reasons best known to the prosecution, he has not been called to depose before the Court. Another witness Mahobatsinh in his evidence has clearly stated that he has not witnessed the incident, meaning thereby he has not supported the prosecution case. Once the statements of these witnesses taken out of consideration, there is no material which may involve the accused with the commission of the crime. Apart from this, the so-called injuries to the person of the injured are also not corroborated by the medical evidence. It is the specific say of the injured Prabhu, Ex.36, that the accused inflicted three blows on his cheek, shoulder and back portion. However, Dr. Dahyalal Devrajbhai (PW 5, Ex.40) found four cut injuries on the jaw as well as on the left portion of the nerve and two other injuries also on the left corner of mouth resulting in amputation of teeth. Dr. Mahendra Kumar (PW 9, Ex.50), Medical Officer of the Civil Hospital, Ahmedabad, who later on

treated the injured, in his evidence has also stated that there were four injuries on the jaw as well as on the left leg while one contused injury on the left leg. In view of this medical evidence, it is clear that the injuries described on the person of the injured are not consistent with the medical evidence. One more factor is required to be taken into consideration viz that the prosecution has not proved that the blood found on the bushirt of the accused was that of the injured. Thus, considering the prosecution case in toto, it would certainly raise a doubt regarding the involvement of the accused in the commission of the crime and the manner in which the incident took place and the accused, in my opinion, has rightly been given benefit of doubt. There being no substance in the appeal, it is required to be dismissed.

In the result, the appeal is dismissed.

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